

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4110 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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AMRELI DIST PANCHAYAT

Versus

KHEMESHANKAR HIMATLAL PANDYA

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Appearance:

MR HS MUNSHAW for Petitioners

MR VIJAY H PATEL for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/04/96

ORAL JUDGEMENT

The respondent workman was appointed as watchman on 1.12.1983 in the sub-division of Liliy-mota panchayat which was a sub-division panchayat under the District Panchayat of Amreli. It is not disputed that the services of the respondent workman were terminated on 1.8.1984 orally. The respondent workman raised industrial dispute and while the conciliation proceedings were pending he was taken back on job on 20.12.1984 but on 30.12.1984 his services were again terminated orally. It is not in dispute that at the time of the termination either on 1.8.1984 or 30.12.1984 the requirements under

section 25-F had not been followed. The Labour Court, Rajkot by its award dated 28.2.1992 granted the relief of reinstatement with continuity of service and full back wages for the entire period.

This award dated 28.2.1992 has been challenged by the Amreli District Panchayat in this Special Civil Application. Rule was issued on 17.6.1992 and ad-interim relief was also granted in terms of para 9(c) meaning thereby that the award was stayed by this Court. The respondent workman did not move any other application for relief under section 17-B of the Industrial Disputes Act.

The award is challenged by the petitioner firstly on the ground that the concerned sub-division has not been impleaded as party and in absence of the necessary party the award could not have been passed. Mr. Patel appearing for the respondent workman has submitted that the respondent workman was initially employed in sub-division of Liliya-mota i.e. sub-division panchayat under the District Panchayat, Amreli and this sub-division was a party initially but later on in view of the fact that sub-division had been closed the respondent workman with the permission of the Labour Court impleaded the Executive Engineer of the District Panchayat, Amreli as a party respondent in the proceedings which were pending before the Labour Court and therefore the objection of non-joinder of the necessary party is not tenable. Mr. H.S. Munshaw has contested this factual position by referring to the title as contended in the copy of the award and has submitted that in the title the Executive Engineer of District Panchayat, Amreli is a party but the other party is the Deputy Executive Engineer, Panchayat Peta Vibhag, Amreli which was not the appointing authority of the respondent workman. However this position is admitted by Mr. Munshaw that the office of the sub-division of Liliya-mota panchayat has been closed down. In this view of the matter the explanation given by Mr. Patel appears to be correct and once the Executive Engineer of District Panchayat, Amreli has been impleaded as party which was the parent panchayat and sub-division of Liliya-mota being the panchayat sub-division under the District Panchayat, Amreli, the objection raised on behalf of Mr. Munshaw cannot be sustained and the award cannot be set aside on this ground.

The next ground on which the award is assailed is that the respondent workman has not completed 240 days working and since there was no work his services had to

be terminated. There being no work in the sub-division may be a valid justification for retrenchment but the question is as to whether the respondent workman had completed the period of 240 days of continuous service or not. In para 3 of the Special Civil Application the petitioner panchayat itself has given out only working days on which the respondent workman had worked during the period 1.12.1983 to 31.7.1984 and it comes out to 168 days. The total period from 1.12.1983 to 31.7.1984 comes out to be 241 days and in view of the admitted position that during the pendency of the conciliation proceedings the respondent workman was taken back on job on 20.12.1984 and was then continued upto 30.12.1984. Whether the period of working is taken upto 1.8.1984 or 30.12.1984 in view of the provision of section 25-B of the Industrial Disputes Act the respondent workman had completed 240 days and the interruption of service on account of the authorised holidays and the interruption on account of the cessation of work for no fault on the part of the respondent workman has to be credited in his favour and therefore looked at from any angle the respondent workman being entitled to the benefit of the provision contained in section 25-F of the I.D. Act it cannot be said that he had not completed 240 days. In this view of the matter, the finding of the Labour Court that the respondent workman had completed 240 days of service and was entitled to protection of 25-F of the I.D. Act cannot be disturbed. Once it is held that the respondent workman had completed 240 days, there being admitted position between the parties that no notice was given nor any retrenchment compensation was paid it is clear that the provisions of section 25-F which were required to be followed had not been followed by the petitioner while terminating the services of the respondent workman and therefore the relief of reinstatement which has been granted by the Labour Court to the respondent workman does not warrant any interference by this Court.

So far as the question of backwages is concerned the respondent workman had made a bald statement in his examination that he had made efforts to get the job but did not get the job and he had not earned anything during the period of enforced idleness. On behalf of the panchayat the reply taking objection about the necessary party had only been filed and thereafter the matter was neither pursued nor contested before the Labour Court and virtually the award was passed on the basis of the pleadings and evidence tendered by the respondent workman as the office of the panchayat did not attend the proceedings. Looking to the facts and circumstances of

the case and feeble and vague depositions made by the respondent workman with regard to his not being employed Mr.Patel submits that the respondent workman shall feel satisfied even if he is granted 50% of the backwages. Since the deposition had been made that the respondent workman was not able to get any employment and he had not earned anything during the intervening period, the statement made by Mr.Patel to reduce the amount of backwages from full backwages to 50% of the backwages is reasonable and acceptable. Accordingly the relief of full backwages is reduced to 50% and the impugned award dated 28.2.1992 passed by the Labour Court, Rajkot in Reference (LCR) No. 827 of 1985 shall stand modified accordingly and the respondent workman shall be entitled to the relief of reinstatement with continuity of service but only 50% of the backwages instead of full backwages. Should the respondent workman move any application for the wages with affidavit etc. for the period after the date of the award the petitioner panchayat shall decide that application within a period of three months from the date it is moved.

Mr.H.S.Munshaw, learned counsel appearing on behalf of the petitioner has submitted that there being no work the relief of reinstatement ought not to have been granted. It is unfortunate that the functionaries of the concerned panchayat remained absolutely complacent and did not pursue or contest the matter before the Labour Court and therefore keeping in view the ground raised by Mr. Munshaw on behalf of the panchayat that there is no work it is left open for the petitioner panchayat to pass any appropriate orders in accordance with law after complying the award. So far as the period after the passing of the award dated 28.2.1982 is concerned, while the respondent workman has to be reinstated with effect from 1.3.1992 the date following the date of the award the wages for the period on and from 1.3.1992 shall be payable to the respondent workman subject to the condition that he produces satisfactory evidence before the petitioner panchayat that he has not been gainfully employed anywhere even after the date of the award. This clarificatory direction has become necessary to be given also in view of the fact that the respondent workman did not file any application under section 17-B of the I.D.Act during the pendency of this petition eventhough the interim order was operative against the respondent workman as passed by this Court way back on 17.6.1992 which automatically ceases to operate from to-day with the decision of the main matter.

This Special Civil Application is accordingly

allowed in part as stated above and the rule is also made  
absolute in the terms as aforesaid. No order as to costs.

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